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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,661	09/29/2003	Elof Eriksson	CEL.728.US	2357
60404 7590 05/30/2007 KINETIC CONCEPTS, INC. LEGAL DEPARTMENT INTELLECTUAL PROPERTY P.O. BOX 659508 SAN ANTONIO, TX 78265				
EXAMINER TYSON, MELANIE RUANO				
ART UNIT 3731		PAPER NUMBER		
MAIL DATE 05/30/2007		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

10/673,661

### Applicant(s)

ERIKSSON ET AL.

### Examiner

Melanie Tyson

### Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is in response to applicant's amendments received on 27 February 2007.

Corrections made to the claims are accepted.

#### ***Response to Arguments***

1. Applicant's arguments filed 27 February 2007, with respect to the rejection(s) of claim(s) 1-9 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "said drive end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 2, 4, 9-14, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (Patent No. 3,037,509) in view of Eriksson (Patent No. 5,152,757).

Schutz discloses a dermal tissue grafting system (see entire document) comprising a tissue particle harvester assembly (for example, see Figures 1 and 2), a tissue particle collector (storage container 20), a particle retriever (spray nozzle 18, which *retrieves* particles from the storage container 20), and a flushing container (for example, see column 3, lines 51-55; supply containers provide a flushing fluid through conduits to help remove, or flush, tissue particles). Schutz discloses the tissue particle harvester assembly comprises a harvester housing (10) having an interior space, or opening, a tissue-cutting tool (blade 92) proximal to the opening (for example, see Figure 6), and a drive means (for example, see column 6, lines 45-49; a driving motor). Schutz further discloses the tissue-cutting tool (92) comprises a rotatable shaft (76) having a drive end (for example, see column 4, lines 52-56) and a tool end (74). Schutz discloses applying the excised particles to a recipient area (for example, see column 1,

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lines 10-13), however, fails to disclose applying the excised particles to a chambered dressing.

Eriksson discloses a treatment system (see entire document). Eriksson teaches a chambered dressing, or graft cell, (for example, see Figure 10) capable of receiving collected tissue particles and culturing the growth of dermal tissue graft, and further teaches applying minced particles retrieved from the lower abdomen area to the chambered dressing (for example, see column 8, lines 1-5). Eriksson further teaches the chambered dressing comprises a port (28) and a portion that is substantially transparent (24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the excised particles collected with the device of Schutz to a chambered dressing as taught by Eriksson in order to be able to control the wound healing process, thus enhancing wound healing (for example, see column 2, lines 2-4).

With further respect to claim 9, Schutz in view of Eriksson discloses accessing a dermal tissue sample with a tissue harvester assembly, collecting the tissue particles, processing the tissue sample (can add a coagulating or additive agent; for example, see Schutz column 3, lines 49-51), and seeding a chambered dressing with the collected tissue and culturing the growth of a dermal tissue graft (see above).

With further respect to claim 10, Schutz in view of Eriksson fails to disclose the specific size of the chambered dressing, or graft cell. However, Schutz in view of Eriksson discloses that it is well known that the size and shapes of wounds vary significantly (for example, see Eriksson column 21, lines 12-14). Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to provide a *nanograft* cell in the case of a small wound. Furthermore, a change in size is generally recognized as being within the level of ordinary skill in the art.

7. Claims 3, 5-8, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz in view of Eriksson as applied to the claims above, and further in view of Adamson et al. (Patent No. 6,391,034 B1). Schutz in view of Eriksson discloses a device as described above, however, fails to disclose the harvester housing has an adjustable orifice for pressing against and receiving a dermal tissue layer and that the tool end is capable of mounting a cutting drum.

Adamson discloses a device that cuts and collects tissue (see entire document). Adamson teaches a harvester housing (for example, see Figures 1, 5, and 9; element 12) having an interior space (cavity 14) and an orifice (top of cavity 14), a cutting tool comprising a rotatable shaft (48) having a drive end (52) for engaging a drive means (for example, see column 3, lines 22-24), wherein a distance between the opening and cutting tool is adjustable (for example, see column 3, lines 28-34), and a tool end (rest of shaft 48) capable of mounting a cutting drum (for example, see Figures 7-10; cylinders 84 and 90 may be defined as rotary *drums*) with or without a tapered end, since changing the shape of an element merely involves ordinary skill in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the harvester housing and tool end of Schutz in view of Eriksson as taught by Adamson in order to be able to remove tissue quickly and effectively, which

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minimizes the time a patient spends under anesthetic (for example, see column 2, lines 10-13).

With further respect to claims 5 and 6, Schutz in view of Eriksson in view of Adamson discloses the depth of tissue removal is adjustable by an adjustment bracket (for example, see Adamson, element 60; column 3, lines 28-34). Schutz in view of Eriksson in view of Adamson fails to disclose adjusting the device such that the tissue-cutting surface projects through the orifice of the harvester in the range of about .01-.9 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the device such that the tissue-cutting surface projects through the orifice of the harvester in the range of about .01-.9mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

With further respect to claim 17, Schutz in view of Eriksson in view of Adamson discloses many types of cutting tools, however, fails to disclose the cutting tool comprises a scallop hypo-tube. Applicant states on page 9 of the specification that "the cutting surface of a rotating drum type cutting tool can be practiced with any variety of different cutting features selectable by the ordinary skilled artisan" and cites a scallop hypo-tube as an example. Applicant has not disclosed that a scallop hypo-tube provides an advantage, is used for a particular purpose, or solves a stated problem. Therefore, it would have been obvious to modify the cutting surface of the rotating drum of Schutz in view of Eriksson in view of Adamson to obtain the invention as specified in claim 17.

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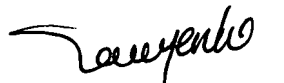
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 9-5:30, Fridays 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson  
May 15, 2007



JACKIE TAN-UYEN HO  
PRIMARY EXAMINER  
5/24/07